



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

sonal estate which other evidence proved to have belonged to the deceased, and the commonwealth was thus enabled to furnish the jury with an inference of robbery, it was an inference to which the commonwealth was entitled. A lone woman, shown to have had money, is foully murdered, and her administrator finds no money to administer. When men are on trial for her murder who spoke of making a point to rob her, and if necessary murder her, and who spoke also of the "pile" they expected to obtain, we think it was competent to show by the public records that her personal representative found no money.

As to the overruling the motion for a new trial, it is not a proper subject for an assignment of error. The discretion of the court is not reviewable here. Nor is the complaint that the court misapplied its own rule of practice, a matter of which we can take notice. The rule is prescribed by the court itself, to regulate its own discretion, and the refusal to grant a new trial is an exercise of discretion with which we cannot interfere, whether it conformed to the rule of court or disregarded it.

We have thus gone carefully through the several errors assigned upon this record, and finding no one that would justify us in reversing the judgment, it must stand affirmed.

Supreme Court of Indiana.

McDONALD ET AL. v. McDONALD.

Where land is paid for jointly by A. and B., and the deed is made to A. alone, under such circumstances that a trust, not within the Statute of Frauds, would result by implication of law in favor of B., the character of such trust is not altered by an express verbal agreement or by a declaration of A. that he holds the land subject to such trust; and therefore it may be proved by parol.

A trust implied by law from a given state of facts, is not brought within the Statute of Frauds so as to require to be proved by written evidence, by the declaration of the trustee that he holds subject to such trust.

ACTION of partition. The facts sufficiently appear by the opinion of the court, delivered by

FRAZER, J.—The plaintiffs and defendants were the heirs at law of Patrick McDonald, deceased. The defendants, who are appellants here, claim each one-third of the land by answer, in

the nature of a counter claim, in which they admit that the legal title was in Patrick at the time of his death, but aver that they, Edward and Michael, were the equitable owners of the undivided two thirds part thereof, because they and the said Patrick McDonald purchased said lands in partnership, paid for the same with their joint moneys, had occupied them in common, and improved them for their joint benefit, and had cultivated them continuously for their joint support, and as partners from the dates of purchase to the time of the death of Patrick, &c.; and that the deeds for the several pieces of lands described were made to Patrick to be held, and which he did hold by agreement in trust for said partnership concern. Reply 1. General denial. 2. Twenty years' adverse possession. Verdict and judgment for plaintiffs.

A cross-error assigned may as well first be considered. It is that the defendants were permitted to testify as witnesses in their own behalf. The solution of the question depends upon the Act of 1861, 2 G. & H. 168, note. By that act the parties to an action are made competent witnesses for themselves, except in certain cases; and amongst the exceptions are named, "all suits where an executor, administrator, or guardian is a party," and judgment may be rendered for or against the estate represented by the executor, administrator, or guardian. The case at bar cannot be brought within the exceptions of the statute by any kind of construction of which the language is susceptible. This is not a case to which an administrator, executor, or guardian is a party. There was an infant defendant to the complaint, for whom the court appointed a guardian *ad litem*, but that did not make the guardian *ad litem* a party to the suit. The most that can be said is, that there was exactly the same reason for making the exception broad enough to cover cases like this that there was to make it as it is. That argument would have controlling influence if the language of the act left any room for construction, but as there is none, it can be efficient only when addressed to the legislature. We adhere to the decision made upon this point in *Dahoney v. Hall*, 20 Ind. 264.

The evidence strongly supported the allegations of the answer. It tended to show an agreement between the three brothers, made in Europe and afterwards renewed in this country, to labor on joint account for the purpose of creating a common fund to be

invested in lands for the benefit of all ; and that this agreement was faithfully executed, each by his earnings contributing to the fund, and the lands being so purchased jointly occupied and used ; but this contract was not in writing, and the title-deeds were all taken in the name of the deceased by agreement as alleged. The question raised by instructions given to the jury, and others asked and refused, and which we must decide, is whether, under such circumstances, there would be a resulting trust in favor of the appellants. That an estate purchased in the name of one with money belonging to and paid by another is subject to a resulting trust in favor of the party to whom the money belonged, is a familiar doctrine of equity. The trust is implied, and need not therefore be proved by written evidence ; the case being expressly excepted from the operation of the Statute of Frauds.

But in the case before us there is an additional element—it was orally expressly agreed that the lands should be purchased and held for joint use and benefit. Does this change the case so as to render parol evidence insufficient to establish the trust ? This question has, we believe, never been expressly decided by this court in a case where the point was necessarily involved, but it has nevertheless attracted the attention of the judges, and received some consideration at their hands. In *Irwins v. Ivers*, 7 Ind. 308, Judge DAVISON, in delivering the opinion, seemed to favor the proposition that though the circumstances attending the purchase would of themselves raise a trust by implication, yet that if the same trust had been also verbally and specifically declared, then the trust must fail, because it would be within the statute. But in *Miller v. Blackburn*, 14 Ind. 62, Judge HANNA withheld his assent from this doctrine, and Judge WORDEN, in the same case, expressed himself not satisfied with it, as applicable to cases where the trust proved by parol is the same as that resulting by implication. The elementary writers declare the rule in the broad and general terms, which received the assent of Judge DAVISON above referred to. But we have not been able to discover any adjudicated case which justifies it. Nor does it seem to us to rest upon any solid reason. Where a particular trust is clearly shown by parol to have been intended, there is manifest justice in excluding thereby the implication of another, altogether different, in all cases not tainted with fraud ; but it would be impossible to assign any satisfactory reason for a deter-

mination that a trust in equity in aid of justice and fair dealing, implied from the circumstance that the *cestui que trust* paid the purchase-money, shall be defeated by the mere fact that the trustee was honest enough to declare orally the obligation which rested on his conscience, and too honest to deny or conceal it. Upon principle, it would be a paradox to say that the frank admission and promulgation of the existence of a fact shall prevent that very fact from having its rightful consequences, and indeed prevent it from being shown by other means; or that it should bar the implication of its existence which would otherwise result; the express declaration of the truth orally, becoming a means to deprive the other party of the rights which are otherwise due to him, because the law implies the very truth thus asserted. We think that no court has ever deliberately sanctioned such a doctrine, and we are not disposed to set the example.

But it seems to us that our statute concerning trusts and powers conclusively settles a part of the case before us. It somewhat changes the general doctrine previously held, but makes a rule which is applicable to all the lands which were purchased after the act came in force. It provides generally that where a conveyance is made to one, the consideration being paid by another, no trust shall result in favor of the latter if the conveyance was so taken with his consent, except in certain cases; and one of the cases so excepted is when by agreement, without any fraudulent intent, the party to whom the conveyance was made was to hold the land in trust: 1 G. & H. 651, §§ 6 & 8. It appears by the evidence that several of the tracts of land were conveyed to Patrick after this statute took effect, and there is nothing to taint the transaction with a fraudulent intent.

We have not considered a question much discussed in the briefs, whether there was such a partnership between the three brothers as would subject the estate in these lands to commercial conditions like personal property, and whether such partnership contract is within the statute, for the reason that it has seemed to us unnecessary for the purposes of the present case. It is enough that the lands were purchased with a common fund, owned in part by the appellants, and that in consequence a trust in their favor results. It is argued, however, that the evidence did not disclose what exact aliquot part of the purchase-money of the lands belonged to the appellants respectively, and consequently that

there could have been no verdict for them at any rate. We cannot say that. There was evidence upon the subject which would have justified the jury in finding some part of the money to have been paid by them, and possibly that each paid one-third. We are not called upon to say what the jury ought to have found upon that subject. That there was evidence upon it which would have supported a finding for the appellants in this court, and that it was excluded from their consideration by the charge of the court, that "the defendants have failed to sustain their answer," constitutes error for which we must reverse the decision below.

Supreme Court of New Jersey.

THE STATE EX REL. JOHN M. PANGBORN ET AL., COMMISSIONERS OF POLICE, v. EDWARD F. C. YOUNG, CITY TREASURER.

THE SAME v. McMANUS.

The copy of a legislative act, certified by the chairman of each house, signed by the Governor, and filed in the office of the Secretary of State, is the sole and conclusive evidence of the existence and contents of a statute.

The journals of the legislative houses are not competent evidence to show that a copy of a statute, authenticated in the manner above stated, does not contain the whole of the law as, in point of fact, it was enacted.

It is the province of the legislative department to certify, in its own mode, the laws it enacts, and such certificate is conclusive on the other co-ordinate departments of the government.

Such also was the rule at common law.

Jacob Weart and C. Parker, for the plaintiff.

Winfield & Bradley, for defendants.

The opinion of the court was delivered by

BEASLEY, C. J.—This controversy relates to an act of the legislature passed on the 23d day of March 1866, entitled "An act to establish a police district in the county of Hudson, and to provide for the government thereof."

The general purpose of this legislative enactment was to abolish the ancient system of police, of which the mayor and other municipal authorities of Jersey City had been the organs, and to transfer the power belonging to that department to a board of three commissioners to be appointed by the Governor, with the consent of the Senate of the state. It is not denied that the rela-